APPENDIX A

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

At Alexandria

Civil Action No. 2604

Harrison Mann, et al.

v.

Levin Nock Davis, et al.

(Argued March 10, 1965 Decided April 9, 1965)

Before BRYAN, Circuit Judge, and LEWIS and HOFFMAN, District Judges.

OPINION

ALBERT V. BRYAN, Circuit Judge:

Virginia's 1964 reapportionment of the State into districts for the election of delegates and senators in her General Assembly, following our invalidation of the 1962 redistricting,[1] is here attacked as denying Fourteenth Amendment equal protection of the laws. The assault is made in three separate intervening petitions in the original action, each dealing with a local problem, by certain citizens of Henrico

[1]Mann v. Davis, 213 F. Supp. 577 (1962), affirmed sub. nom. Davis v. Mann, 377 U.S. 678 (1964) By order entered September 18, 1964 this court restored its injunction which had been suspended during the appeal. Thereupon the Legislature adopted a new apportionment in December 1964. The statute relating to the State Senate appears as Chapter 1, and the enactment relating to the House of Delegates as Chapter 2, of the Acts of Assembly, Extra Session 1964.

County, the City of Richmond and Shenandoah County. We think only Shenandoah can prevail.

HENRICO COUNTY

The grievance asserted by these intervenors is that Henrico County and Richmond were placed in a single district, No. 36, for representation in the House of Delegates, rather than each made an independent district. Combined, these two political subdivisions were given 8 delegates, but Henrico pleads for 3 delegates of its own, leaving the remaining 5 to Richmond. The injury from the consolidation, according to the county, is that as Richmond has a voting power greater than Henrico, the city will be able to elect all 8 delegates and Henrico will have no representation by its own citizens.

This result, says Henrico, is due to a general disregard by the General Assembly of the guide lines and ground rules thus far enunciated for legislative apportionment by the Supreme Court. E.g. Baker v. Carr, 369 U.S. 186 (1962); Gray v. Sanders, 372 U.S. 368 (1963); Westberry v. Sanders, 376 U.S. 1 (1964); Reynolds v. Sims, 377 U.S. 533 (1964); WMCA, Inc. v. Lomenzo, 377 U.S. 633 (1964); Maryland Committee v. Tawes, 377 U.S. 656 (1964); Davis v. Mann, 377 U.S. 678 (1964); Roman v. Sincock, 377 U.S. 695 (1964); Lucas v. Colorado General Assembly, 377 U.S. 713 (1964); Fortson v. Dorsey, 379 U.S. 433 (1965). Our examination of the record discloses no such trespasses or fouls. To demonstrate the correctness of this conclusion, we review the 1964 reapportionment (the Act), touching particularly upon the features on which Henrico found its accusations.

Ideal representation in the House of Delegates, when Virginia's total population according to the 1960 census is distributed among its 100 delegates, is 39,669 persons for

each member. Richmond had a population of 219,958, Henrico 117,339. Applying these figures, it appears that Henrico would be entitled to 2 delegates and wanting but 3,668 residents for a third. Richmond alone could justify 5 delegates, with 21,613 towards a sixth. To have awarded only 5 delegates to Richmond would have meant that each of its delegates represented 43,911, or 4,242 persons in excess of the norm. With Henrico not quite earning 3 delegates, but Richmond due more than 5, the solution of the Virginia Assembly was to give the two areas 8 delegates jointly. There would then be 42,164 persons per delegate, a representation fairly nearing the par of 39,669.

A multi-member district, though linking more than one political subdivision, is not Constitutionally impermissible. Fortson v. Dorsey, supra, 379 U.S. 433 (1965). A multi-county or a county-city district is also legal. Id. But the possibility that a delegate or delegates may be chosen from one part of a district—whether a multi-county or a county-city district—rather than from another exposes no defect in the allotment. Id. In passing, it is at least noteworthy that Henrico made no objection in 1962 when the reapportionment act gave Henrico 1 delegate and then assigned 8 delegates jointly to Richmond and Henrico. While this distribution was in effect in 1963, we are told that a number of the 8 winning candidates, although resident in Richmond, received more votes in Henrico than did the candidates from that county. This would seem to refute somewhat Henrico's insistence that its citizens prefer to have their delegates come from Henrico.

The multi-member policy here does not have the "undesirable features" mooted in Lucas v. Colorado General Assembly, supra, 377 U.S. 713, 731 with footnote 21 (1964). The unification does not constitute so spacious or "populous"

a territory as to demand the establishment of "identifiable constituencies." Indeed, Henrico now pledges its willingness to have 3 delegates elected at large from among its whole population of 117,339 and without a smaller constituency than its entire area.

The effect of the Act has not been to obliterate the traditional integrity in Virginia of city and county lines. The custom was sanctioned in Davis v. Mann, supra, 377 U.S. 678, 686 (1964). The individuality of Henrico and Richmond is observed by the design of a separate senatorial district for each. We see no inconsistency in allocating senators on a different basis from delegates. Such a variation has been authoritatively approved, when, as presently, it may tend to "balance off minor inequities." Reynolds v. Sims, supra, 377 U.S. 533, 577, 579 (1964).

Physical factors could reliably have directed the judgment of the General Assembly in determining upon the union of Richmond and Henrico. They form a compact and contiguous territory. If they may not agree politically, concededly their interests are interknit and common in many aspects. The county is the residence of hundreds of business, professional and otherwise occupied persons plying their callings in the city. In fact, while the two are distinct governmental units, the courthouse of the county is situate well within the city's corporate limits. At all events, the Act does not in any degree devalue the vote in either Richmond or Henrico below the Constitutional standard of weight and fineness, "one person, one vote."

City of Richmond

Certain Richmond Negro residents question the fusion of the city and Henrico County for the election of delegates on the ground that it deprives Negro citizens of a chance

to elect one of their race to the General Assembly. They point out that the population of Richmond consists of 92,331 non-white and 127,627 white persons; that in Henrico the non-white residents number 6,070, the white 111,269; and that the potential vote of Negroes in Richmond is, by the coadunation, reduced from 42% (the percentage of non-white in Richmond) to 29% (the percentage of non-whites in the aggregate population of the city and Henrico).

Further, they suggest that the Negro communities in Richmond are so located that any division of the city into 5 fairly equal segments, each embracing a sufficient number of inhabitants for a delegate, would create 1 or more districts in which Negroes would be the majority. Additionally, they say that if the city were divided into 2 substantially equal districts with the allotment of 1 of Richmond's 2 senators to each district, the colored population in at least 1 might elect a senator.

Consequently, these intervenors suggest that Richmond be assigned 5 delegates apart from Henrico, and that the 5 be distributed, 1 to a district, among 5 substantially equal districts. Likewise, they ask that the city be fairly split into 2 senatorial districts. These contentions are underbraced by advertence to the Virginia constitutional injunction that legislators be elected by the voters of the several senatorial and house districts, and that apportionment of the "State" into such districts be made every ten years. §§ 41, 42 and 43. From this they conclude that these clauses command legislative allocation, both within and without city and county marches, by population and not according to existing governmental units. Omission of such delineations inside the city and State-wide, the intervenors aver, violates the Fourteenth and Fifteenth Amendments, as a deprivation of equal protection of the election laws and abridgement of the right to vote. We disagree.

To begin with, we reaffirm our earlier declaration of the validity of conjoining Richmond and Henrico. Moreover, as we have also shown, adherence to municipal boundaries in establishing legislative districts has been declared to be altogether free of legal infirmity. Furthermore, the racial exclusion decried in Gomillion v. Lightfoot, 364 U.S. 399 (1960) and universally forbidden is not evident. Neither Richmond, nor any other city or county in Virginia has in her history ever been sub-districted. Even councilmen for the local government of Richmond are elected at large, and this without question by either race.

The concept of "one person, one vote" we understand, neither connotes nor envisages representation according to color. Certainly it does not demand an alignment of districts to assure success at the polls of any race. No line may be drawn to prefer by race or color.

As Justice Douglas, though in dissent but obviously undeniably, tartly put it in Wright v. Rockefeller, 376 U.S. 52, 62, 66 (1964):

> "The fact that Negro political leaders find advantage in this nearly solid Negro and Puerto Rican district is irrelevant to our problem. Rotten boroughs were long a curse of democratic processes. Racial boroughs are also at war with democratic standards."

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> "... The principle of equality is at war with the notion that District A must be represented by a Negro, as it is with the notion that District B must be represented by a Caucasian, District C by a Jew, District D by a Catholic, and so on.... Of course race, like religion, plays an important role in the choices which individual voters make from among various candidates. But government has no business designing electoral districts along racial or religious lines...."

Previously Justice Douglas had said for the Court in Gray v. Sanders, supra, 372 U.S. 368, 380 (1963):

> "... The concept of political equality in the voting booth contained in the Fifteenth Amendment extends to all phases of state elections, ... and, as previously noted, there is no indication in the Constitution that homesite or occupation affords a permissible basis for distinguishing between qualified voters within the State."

SHENANDOAH COUNTY

Certain citizens of Shenandoah County protest they have been deprived of Constitutional rights by the 1964 assignment of delegates in the 50th and 59th districts. The former, which has been assigned 1 delegate, comprises Page, Rockingham, Shenandoah Counties and the City of Harrisonburg. The 59th district encompasses only Rockingham County and Harrisonburg but it is also given 1 delegate. Harrisonburg is geographically within Rockingham County. Over-representation of Shenandoah County under the 1962 reapportionment was noted in Davis v. Mann, supra, 377 U.S. 678, 688; it had "one seat in the Virginia House" although its population was 21,825 as compared to the "ideal ratio of one delegate for each 39,669 persons."

In 1964 Shenandoah's 21,825 people were leagued with Rockingham's 39,559, Page County's 15,572, and Harrisonburg's 12,842, increased to 13,804 by an annexation in 1962.* Obviously this readjustment erects a district of 90,760, far above criterion of 39,669. Rockingham and Harrisonburg are saved from injustice by their additional

*These figures are taken from the face of the complaint of the Shenandoah Intervenors. The U.S. Bureau of Census' U.S. Census of Population: 1960 General Population Characteristics, Virginia. Final Report PC(1)-48B, reveals Rockingham's population as 40,485 and Harrisonburg's as 11,916 rather than 12,842 prior to annexation.

delegate, but Shenandoah with Page suffers from a clear under-representation.

Invidious discrimination has thus been visited upon Shenandoah. With primary elections for the General Assembly scheduled for July of this year, and candidates' filing times therefor expiring in April, correction of this injury to Shenandoah County cannot await the convening of the General Assembly in 1966. Consequently, we are required to act to prevent the watering down of the Shenandoah votes. Until the General Assembly can rectify the inequity, we must set aside the 1964 apportionment of the 50th and 59th districts. In lieu of the present provision for them, the court will order that the counties of Page, Rockingham and Shenandoah and the City of Harrisonburg be assigned 2 delegates to represent all four of these political subdivisions jointly. This adjustment will effectuate a representation of 45,380 persons per delegate. While this is above the proper ratio, we do not deem it an unfair approach in the circumstances.

Recapitulation

The record does not authorize attribution to the General Assembly of caprice or an unacceptable motive in the Henrico and Richmond reapportionment. To the contrary, a firm foundation may be seen for it. For Shenandoah County, however, the imbalance in representation is obvious and fatal.

An order will be entered dismissing the intervening complaints of Henrico and Richmond, but sustaining the claim of the Shenandoah intervenors, with the relief we have prescribed. The order will also express our approval of the Act insofar as such approval is required to remove any question or doubt of the validity of any legislation which has been, or may be, passed by the General Assembly since the adoption

of the Act, our order of September 18, 1964 having required the General Assembly acting thereafter to make a Constitutionally valid reapportionment of the State before undertaking any other legislation.

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

At Alexandria

Civil Action No. 2604

Harrison Mann, et al.

v.

Levin Nock Davis, et al.

ORDER ON PETITIONS AND COMPLAINTS OF INTERVENORS FROM HENRICO COUNTY, CITY OF RICHMOND AND SHENANDOAH COUNTY

Upon consideration of the intervening petition and complaint of Simeon A. Burnette, et al., designated as the Henrico County intervenors, the intervening petition and complaint of William S. Thornton, et al., designated as the City of Richmond intervenors, and the intervening petition and complaint of Jesse D. Funkhouser, et al., designated as the Shenandoah County intervenors, the answers thereto, the evidence adduced thereon, as well as the arguments of counsel, on brief and orally, the court for the reasons stated in its opinion this day filed, which is adopted as its findings of fact and conclusions of law, orders as follows:

1. That the petitions and complaints of the Henrico County and the City of Richmond intervenors be, and they

are hereby, dismissed, the respondents thereto recovering their costs of the said intervenors;

2. That the petition and complaint of the Shenandoah County intervenors be, and they are hereby, sustained in respect to the apportionment of representation of that county in the House of Delegates;

3. That the State and local election officials who are defendants to the said intervening petition and complaint of Shenandoah County be, and each of them is hereby, enjoined and restrained from acting under and pursuant to so much of Chapter 2 of the Acts of the General Assembly of Virginia, Extra Session 1964, as declares the representation in the House of Delegates for the 50th and 59th districts; that the court now reapportions the said districts so that the counties of Page, Rockingham and Shenandoah and the City of Harrisonburg shall be represented jointly by two delegates; that the reapportionment of the 50th and 59th districts of Virginia as aforesaid shall be effective for the elections, both primary and general, of members of the House of Delegates from the counties of Page, Rockingham and Shenandoah and the City of Harrisonburg in the year 1965 and thereafter until the General Assembly of Virginia shall provide a Constitutionally valid apportionment of representation in the House of Delegates for Shenandoah County; and

4. That the court hereby approves the reapportionment Acts of the General Assembly of Virginia adopted at its Extra Session in December 1964, insofar as such approval may be required to remove any question or doubt of the validity of any legislation which has been, or may be, passed by the General Assembly since the adoption of the said reapportionment Acts.

Nothing further remaining to be done in this action, it is ordered stricken from the docket, and this order is final.

ALBERT V. BRYAN
United States Circuit Judge

WALTER E. HOFFMAN
United States District Judge

OREN R. LEWIS
United States District Judge

April 9th, 1965.

APPENDIX C

§ *24-12. Apportionment of members of House of Delegates.*—Members of the House of Delegates shall be distributed and apportioned, and each county, city and combination is entitled to representation in the House of Delegates by a delegate, or by delegates, as follows:

First.—Chesapeake, two.
Second.—Accomack and Northampton, one.
Third.—Albemarle and Greene, one.
Fourth.—Charlottesville, one.
Fifth.—Alexandria, two.
Sixth.—Alleghany, Botetourt, Covington and Clifton Forge, one.
Seventh.—Amelia, Lunenburg and Nottoway, one.
Eighth.—Amherst and Lynchburg, one.
Ninth.—Arlington, four.
Tenth.—Augusta, Highland, Staunton and Waynesboro, two.
Eleventh.—Bedford, one.
Twelfth.—Bland, Craig, Giles, Pulaski and Wythe, two.

Thirteenth.—Danville and Pittsylvania, one.
Fourteenth.—Brunswick and Dinwiddie, one.
Fifteenth.—Buchanan, one.
Sixteenth.—Russell and Dickenson, one.
Seventeenth.—Roanoke City and Roanoke County, one.
Eighteenth.—Campbell, one.
Nineteenth.—Caroline, King George, Essex and King and Queen, one.
Twentieth.—Fairfax County, and the cities of Alexandria, Fairfax and Falls Church, one.
Twenty-first.—James City, York and Williamsburg, one.
Twenty-second.—Charlotte, Cumberland and Prince Edward, one.
Twenty-third.—Chesterfield and Colonial Heights, two.
Twenty-fourth.—Clarke, Frederick and Winchester, one.
Twenty-fifth.—Danville, one.
Twenty-sixth.—Hampton, two.
Twenty-seventh.—Fairfax County, and cities of Fairfax and Falls Church, six.
Twenty-eighth.—Fauquier, Warren and Rappahannock, one.
Twenty-ninth.—Fluvanna, Goochland, Louisa and Powhatan, one.
Thirtieth.—Franklin County and Floyd, one.
Thirty-first.—Gloucester, Mathews, New Kent, Charles City and Middlesex, one.
Thirty-second.—Carroll, Grayson and Galax, one.
Thirty-third.—Greensville, Surry and Sussex, one.
Thirty-fourth.—Halifax and South Boston, one.
Thirty-fifth.—Hanover and King William, one.
Thirty-sixth.—Henrico, and city of Richmond, eight.

Thirty-seventh.—Henry, Patrick and Martinsville, two.
Thirty-eighth.—Isle of Wight, Southampton, and city of Franklin, one.
Thirty-ninth.—Northumberland, Westmoreland, Lancaster and Richmond County, one.
Fortieth.—Newport News, three.
Forty-first.—Lee, Wise, and city of Norton, two.
Forty-second.—Loudoun and Prince William, two.
Forty-third.—Lynchburg, one.
Forty-fourth.—Madison, Culpeper and Orange, one.
Forty-fifth.—Mecklenburg, one.
Forty-sixth.—Montgomery and Radford, one.
Forty-seventh.—Nansemond and Suffolk, one.
Forty-eighth.—Nelson, Appomattox and Buckingham, one.
Forty-ninth.—Norfolk City, seven.
Fiftieth.—Page, Rockingham, Shenandoah and Harrisonburg, one.
Fifty-first.—Petersburg, one.
Fifty-second.—Pittsylvania, one.
Fifty-third.—Portsmouth, three.
Fifty-fourth.—Prince George and Hopewell, one.
Fifty-fifth.—Virginia Beach, two.
Fifty-sixth.—Roanoke County, one.
Fifty-seventh.—Roanoke City, two.
Fifty-eighth.—Rockbridge, Bath and Buena Vista, one.
Fifty-ninth.—Rockingham and Harrisonburg, one.
Sixtieth.—Smyth, one.
Sixty-first.—Spotsylvania, Stafford and Fredericksburg, one.
Sixty-second.—Tazewell, one.
Sixty-third.—Washington, Scott and Bristol, two.

And the districts hereby created are hereby numbered one (1) to sixty-three (63) inclusive.

The reference to a county or city in this section is to the area comprising such county or city as of January one, nineteen hundred sixty-five. (Code 1919, § 78; 1932, p. 338; 1942, p. 620; 1948, p. 803; 1952, Ex. Sess., c. 18; 1958, c. 333; 1962, c. 638; 1964, Ex. Sess., c. 2.)

§ *24-14. State senatorial districts.*—The State is hereby divided into thirty-three districts entitled to senators as follows:

First.—The counties of Accomack, Northampton, Mathews, Gloucester and York, one.

Second.—Norfolk City, three.

Third.—The cities of Chesapeake, Portsmouth and Virginia Beach, three.

Fourth.—The counties of Halifax, Charlotte, Prince Edward, Lunenburg and Nottoway and the city of South Boston, one.

Fifth.—The counties of Isle of Wight, Nansemond, Southampton, and the cities of Suffolk and Franklin, one.

Sixth.—The counties of Greensville, James City, Prince George, Surry and Sussex, and the cities of Hopewell and Williamsburg, one.

Seventh.—The counties of Brunswick, Dinwiddie and Mecklenburg, and the city of Petersburg, one.

Eighth.—The counties of Arlington and Fairfax, and the cities of Fairfax and Falls Church, one.

Ninth.—Arlington County, one.

Tenth.—The counties of Appomattox, Buckingham, Amherst, Nelson and Campbell, one.

Eleventh.—Bedford County and city of Lynchburg, one.

Twelfth.—The counties of Henry, Patrick and Pittsylvania, and the cities of Danville and Martinsville, two.

Thirteenth.—The counties of Carroll, Floyd, Franklin and Montgomery, and the cities of Galax and Radford, one.

Fourteenth.—The counties of Washington, Lee and Scott and the city of Bristol, one.

Fifteenth.—The counties of Dickenson, Russell and Wise and the city of Norton, one.

Sixteenth.—The counties of Buchanan, Smyth and Tazewell, one.

Seventeenth.—The counties of Bland, Giles, Pulaski, Craig, Grayson and Wythe, one.

Eighteenth.—The counties of Alleghany, Bath, Botetourt, and Roanoke, and the cities of Clifton Forge and Covington, one.

Nineteenth.—The counties of Augusta, Rockbridge and Highland, and the cities of Buena Vista, Staunton and Waynesboro, one.

Twentieth.—The counties of Page, Rappahannock, Rockingham and Warren, and the city of Harrisonburg, one.

Twenty-first.—The counties of Clarke, Frederick, Shenandoah and Loudoun and the city of Winchester, one.

Twenty-second.—The counties of Albemarle, Fluvanna, Greene, Cumberland, Powhatan and Madison, and the city of Charlottesville, one.

Twenty-third.—The counties of Goochland, Louisa, Orange, Spotsylvania, Culpeper, Caroline, King George and the city of Fredericksburg, one.

Twenty-fourth.—The county of Fairfax and the cities of Fairfax and Falls Church, two.

Twenty-fifth.—The counties of Prince William, Stafford and Fauquier, one.

Twenty-sixth.—The counties of Hanover, King William, Essex, King and Queen, Middlesex, Westmoreland, Northumberland, Richmond and Lancaster, one.

Twenty-seventh.—City of Newport News, one.

Twenty-eighth.—City of Hampton, one.

Twenty-ninth.—The counties of Charles City, Chesterfield, Amelia and New Kent and the city of Colonial Heights, one.

Thirtieth.—Richmond City, two.

Thirty-first.—County of Henrico, one.

Thirty-second.—City of Roanoke, one.

Thirty-third.—City of Alexandria, one. (Code 1919, § 79; 1922, p. 463; 1923, p. 17; 1934, p. 252; 1942, p. 622; 1948, p. 805; 1952, Ex. Sess., c. 17; 1958, c. 333; 1962, c. 635; 1964, Ex. Sess., c. 1.)